

ASSEMBLY, No. 1984

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblywoman WRIGHT, Assemblymen ASSELTA,
Kramer, Assemblywoman Murphy and Assemblyman Bateman

1 AN ACT concerning lead evaluation and abatement, amending and
2 supplementing P.L.1993, c.288, and repealing sections 14 through
3 24 of P.L.1993, c.288.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1993, c.288 (C.26:2Q-2) is amended to read as
9 follows:

10 2. As used in sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1
11 through C.26:2Q-12) and sections 6 through 13 of P.L. , c.
12 (C.)(pending before the Legislature as this bill):

13 "Business firm" means a corporation, company, association, society,
14 firm, partnership or joint stock company, or any sole proprietor,
15 engaged in, advertising, or holding itself out to be in the business of
16 lead evaluation or lead abatement.

17 "Commissioner" means the Commissioner of Health.

18 "Department" means the Department of Health.

19 "Lead abatement" means a process designed either to mitigate or to
20 eliminate permanently lead-based paint hazards on a premises and
21 includes, but is not limited to: the removal of lead-based paint and
22 lead-contaminated dust; the containment or encapsulation of
23 lead-based paint; the replacement of lead-painted surfaces or fixtures;
24 the removal or covering of lead-contaminated soil; and all preparation,
25 cleanup, disposal and post-abatement clearance testing activities
26 associated with such measures.

27 "Lead evaluation" means a surface-by-surface investigation to
28 determine the presence of lead-based paint and the provision of a
29 report [explaining] detailing the results of the investigation.

30 "Lead-based paint" means paint or other surface coating material
31 that contains lead in excess of 1.0 milligrams per centimeter squared
32 or in excess of 0.5% by weight, or such other level as may be
33 established by federal law.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Lead-based paint hazard" means any condition that causes
2 exposure to lead from lead-contaminated dust or soil or
3 lead-contaminated paint that is deteriorated or present in surfaces, that
4 would result in adverse human health effects.

5 "Surface" means an area such as an interior or exterior wall, ceiling,
6 floor, door, door frame, window sill, window frame, porch, stair,
7 handrail and spindle, or other abradable surface, soil, furniture, a
8 carpet, a radiator or a water pipe.
9 (cf: P.L.1993, c.288, s.2)

10

11 2. Section 4 of P.L.1993, c.288 (C.26:2Q-4) is amended to read as
12 follows:

13 4. a. The department shall develop, offer, or accredit training
14 courses which shall be required for certification. These training
15 courses shall include instruction in safe and effective evaluation and
16 abatement methods. The training courses shall be developed in
17 accordance with regulations adopted by the [Department of
18 Community Affairs pursuant to sections 14 through 24 of P.L.1993,
19 c.288 (C.52:27D-427 through C.52:27D-437)] department and the
20 "State Uniform Construction Code Act," P.L.1975, c.217
21 (C.52:27D-119 et seq.).

22 b. The training course for persons performing lead evaluation shall
23 include, but not be limited to, instruction in:

24 (1) safe and effective techniques and methods to test for lead
25 hazards and assess lead hazards on premises before, during and after
26 abatement of lead hazards;

27 (2) risk assessment of the dangers posed by lead hazards on a
28 premises and the effectiveness of various abatement techniques and
29 methods and hazard reduction measures to reduce the risk posed by
30 the presence of lead;

31 (3) safe work practices, including determining whether occupants
32 must be relocated during lead abatement;

33 (4) practices to prevent contamination of the premises; and

34 (5) applicable State and federal requirements.

35 c. The training course for persons performing lead abatement shall
36 include, but not be limited to, instruction concerning:

37 (1) safe and effective abatement techniques to remove, cover,
38 encapsulate, or otherwise mitigate lead-based paint and
39 lead-contaminated dust and soil;

40 (2) possible routes of exposure during abatement of lead hazards;

41 (3) safe work practices, including determining whether occupants
42 must be relocated during lead abatement;

43 (4) proper cleanup of lead-contaminated waste generated on the
44 premises during and after lead abatement;

45 (5) safe and lawful handling, transport and disposal of
46 lead-contaminated waste; and

1 (6) applicable State and federal requirements.

2 d. The commissioner is authorized to adopt any applicable federal
3 requirements or guidelines established by federal law, including any
4 requirements or guidelines that apply to homeowners or other property
5 owners, notwithstanding that the requirements or guidelines may be
6 inconsistent with the provisions of sections 1 through 12 of P.L.1993,
7 c.288 (C.26:2Q-1 through C.26:2Q-12).

8 e. The department may establish continuing education requirements
9 for recertification.

10 f. A person shall not hold himself out as accredited by the
11 department or otherwise represent that he is competent to offer
12 training unless he has been accredited to provide training pursuant to
13 this section.

14 (cf: P.L.1993, c.288, s.4)

15

16 3. Section 5 of P.L.1993, c.288 (C.26:2Q-5) is amended to read as
17 follows:

18 5. a. The department may deny, suspend, impose conditions upon,
19 revoke, or refuse to renew a certification for good cause, including but
20 not limited to, the department's finding that:

21 (1) a person has obtained a certification based upon a
22 misrepresentation or fraud;

23 (2) a person performed work without a certification as required in
24 section 3 of P.L.1993, c.288 (C.26:2Q-3);

25 (3) a person engaged in unsafe work practices, violated the rules
26 promulgated by the [Department of Community Affairs pursuant to
27 sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through
28 C.52:27D-437)] department, failed to obtain a permit pursuant to the
29 Uniform Construction Code, N.J.A.C.5:23-1.1 et seq. or acted in a
30 manner which posed a health risk to others;

31 (4) the quality of the person's performance is below standards set
32 by the department and remedial measures such as consultation and
33 training are not accepted or do not result in improvement to a level of
34 acceptable proficiency;

35 (5) a person made false reports or reports not based on work done;

36 (6) a person knowingly authorized or permitted the use of the
37 name of a certified person to an uncertified person;

38 (7) a person falsely represented his certification credentials; or

39 (8) a person has violated any provision of sections 1 through 12 of
40 P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

41 b. An applicant or certificate holder whose application or
42 certification is denied, suspended, conditionally issued, revoked or not
43 renewed is entitled to a hearing pursuant to the provisions of the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.).

46 c. Denial of, suspension of, imposition of conditions upon,

1 revocation of, or refusal to renew a certification shall not limit the
2 department from pursuing against the applicant or certificate holder
3 any other lawful remedy available to the department.

4 d. Any person whose certification has been revoked shall be
5 ineligible to apply for certification for three years from the date of
6 revocation.

7 (cf: P.L.1993, c.288, s.5)

8

9 4. Section 11 of P.L.1993, c.288 (C.26:2Q-11) is amended to read
10 as follows:

11 11. Sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through
12 C.26:2Q-12) and sections 6 through 13 of P.L. c. (C.)(pending
13 before the Legislature as this bill) shall be enforced by the
14 commissioner or his representative, who shall have the right of entry
15 to all premises at which the department has reason to believe that lead
16 abatement or evaluation activities have taken place or are taking place,
17 or to any premises occupied or used by a business firm [subject to
18 sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through
19 C.52:27D-437)]; and the right to review any records for the purposes
20 of inspection or investigation.

21 (cf: P.L.1993, c.288, s.11)

22

23 5. Section 12 of P.L.1993, c.288 (C.26:2Q-12) is amended to read
24 as follows:

25 12. The department[, in consultation with the Department of
26 Community Affairs,] shall adopt rules and regulations pursuant to the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
28 to carry out the provisions of sections 1 through 12 of P.L.1993, c.288
29 (C.26:2Q-1 through C.26:2Q-12).

30 (cf: P.L.1993, c.288, s.12)

31

32 6. (New section) a. A business firm shall neither directly nor
33 indirectly perform lead evaluation or abatement work without first
34 obtaining certification from the department. Certification shall be
35 issued to perform lead evaluation or abatement work if the business
36 firm employs or will employ sufficient numbers and types of personnel
37 certified by the department pursuant to section 3 of P.L.1993, c.288
38 (C.26:2Q-3) to perform lead abatement work and meets all other
39 requirements that the commissioner may establish pursuant to section
40 12 of P.L. , c. (C.)(pending before the Legislature as this bill).
41 The certification shall be in writing, shall contain an expiration date,
42 and shall be signed by the commissioner.

43 A business firm certified by the department pursuant to this
44 subsection shall submit to the department a written statement signed
45 by the owner of the firm verifying that each of its employees or
46 subcontractors performing lead evaluation or abatement work has been

1 certified pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3) and will
2 perform this work in accordance with all applicable local, State and
3 federal requirements, including all applicable record-keeping
4 requirements.

5 b. A person or business firm shall not undertake a project involving
6 lead abatement work without first obtaining a construction permit for
7 that project pursuant to section 12 of P.L.1975, c.217
8 (C.52:27D-130). No permit shall be issued for lead abatement work,
9 except to:

10 (1) an owner undertaking work on his own premises using his own
11 employees, if those employees are certified by the department pursuant
12 to section 3 of P.L.1993, c.288 (C.26:2Q-3);

13 (2) a homeowner proposing to perform lead abatement work
14 himself on a dwelling unit that he owns and occupies as a primary
15 place of residence; or

16 (3) a business firm certified pursuant to this section to perform
17 such work.

18 The issuance of a construction permit to an individual homeowner
19 proposing to perform lead abatement work on a dwelling unit that he
20 owns and occupies as a primary place of residence shall be
21 accompanied by written information developed by the department
22 explaining the dangers of improper lead abatement, procedures for
23 conducting safe lead abatement, and the availability of certified lead
24 abatement contractors, or of any available training for homeowners.

25 c. Nothing in this section shall be construed to restrict or otherwise
26 affect the right of any business firm to engage in painting,
27 woodworking, structural renovation or other indoor or outdoor
28 contracting services that may result in the disturbance of paint, but a
29 business firm shall not hold itself out as certified by the department or
30 otherwise represent that it has specialized competency to perform lead
31 evaluation or abatement work unless it has been certified or otherwise
32 specifically authorized pursuant to this section.

33
34 7. (New section) The certification required pursuant to section 6
35 of P.L. , c. (C.)(pending before the Legislature as this bill)
36 shall be for a period not to exceed two years and shall not be
37 transferable. A business firm may apply for recertification during the
38 90-day period before the certification expiration date, or the 90-day
39 period after the certification expiration date; except that if a business
40 firm applies after the certification expiration date, the firm shall not
41 perform any services for which certification is required until the
42 certification is renewed. If a certification has expired for more than 90
43 days, the business firm is required to obtain a new certification.

44 A copy of the certification shall be conspicuously displayed for
45 public review in the business office of a business firm engaged in the
46 business of abating lead-based paint hazards or conducting lead

1 evaluations. Additionally, the certification number shall be displayed
2 on all business vehicles and at all lead abatement or lead evaluation
3 jobs in progress.

4 A certification or recertification shall not be issued until a
5 certification fee has been paid in full to the department. The
6 commissioner may establish application and certification fees by
7 regulation pursuant to the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.), in an amount sufficient to cover the costs
9 to the department of administering and enforcing the provisions of
10 sections 6 through 13 of P.L. , c. (C.)(pending before the
11 Legislature as this bill).

12

13 8. (New section) a. The department may deny, suspend, impose
14 conditions upon, revoke, or refuse to renew a certification issued
15 pursuant to section 6 of P.L. , c. (C.)(pending before the
16 Legislature as this bill) for good cause, including:

17 (1) violating, or abetting another to commit a violation of sections
18 6 through 13 of P.L. , c. (C.)(pending before the Legislature
19 as this bill);

20 (2) making a false statement on an application for certification, or
21 in providing other information required by the department;

22 (3) misrepresentation of qualifications, or fraudulently obtaining
23 certification;

24 (4) engaging in practices during lead abatement work contrary to
25 safe procedures established therefor; and

26 (5) employing persons to perform lead abatement or lead
27 evaluation work who are not certified pursuant to section 3 of
28 P.L.1993, c.288 (C.26:2Q-3) to perform such work.

29 b. A business firm whose application or certification is denied,
30 suspended, conditionally issued, revoked, or not renewed is entitled to
31 a hearing pursuant to the provisions of the "Administrative Procedure
32 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

33 c. Denial of, suspension of, the imposition of conditions upon,
34 revocation of, or refusal to renew a certification shall not limit the
35 department from pursuing against the applicant or certificate holder
36 any other lawful remedy available to the department.

37 d. A business firm whose certification has been revoked shall be
38 ineligible to apply for certification for three years from the date of
39 revocation. This ineligibility shall extend to any other business firm
40 having any proprietor, officer, director, general partner, or shareholder
41 or limited partner with at least a 10% interest, in common with the
42 business firm whose certification was revoked.

43

44 9. (New section) If the department has reason to believe that a
45 condition exists that poses an imminent threat to the public health,
46 safety or welfare, the department may initiate a civil action in a court

1 of competent jurisdiction for injunctive relief to enforce or prevent a
2 violation of sections 6 through 13 of P.L. , c. (C.)(pending
3 before the Legislature as this bill). The court may proceed in the
4 action in a summary manner.

5
6 10. (New section) A person who knowingly or purposely:

7 a. hinders or delays the department in the enforcement of sections
8 6 through 13 of P.L. , c. (C.)(pending before the Legislature
9 as this bill);

10 b. fails to obtain certification required by sections 6 through 13 of
11 P.L. , c. (C.)(pending before the Legislature as this bill);

12 c. refuses to make his certification issued pursuant to section 6 of
13 P.L. , c. (C.)(pending before the Legislature as this bill)
14 accessible to the commissioner; or

15 d. otherwise violates any provision of sections 6 through 13 of
16 P.L. , c. (C.)(pending before the Legislature as this bill); is
17 guilty of a disorderly persons offense. If the person is a corporation,
18 all officers, directors, and shareholders owning at least a 10% interest
19 in the corporation may be held liable for any violation by the
20 corporation pursuant to this section.

21 The owner of a business firm shall be held liable for any failure by
22 an employee or subcontractor of the firm to adhere to the provisions
23 of sections 6 through 13 of P.L. , c. (C.)(pending before the
24 Legislature as this bill).

25
26 11. (New section) As an alternative, or in addition to the
27 provisions of section 10 of P.L. , c. (C.)(pending before the
28 Legislature as this bill), the commissioner may, subject to notice and
29 hearing, impose an administrative civil penalty for a violation set forth
30 in this section not to exceed \$1,000 for the first offense and \$5,000 for
31 each subsequent offense. If the violation is of a continuing nature,
32 each day it continues constitutes an additional and separate violation.

33 The penalty may be sued for and recovered by and in the name of
34 the commissioner in a civil action in a court of competent jurisdiction
35 by a summary proceeding under "the penalty enforcement law,"
36 N.J.S.2A:58-1 et seq. For the purposes of this act, the Superior Court
37 and the municipal court shall have jurisdiction to enforce the
38 provisions of "the penalty enforcement law."

39 The department may compromise and settle a claim for a penalty
40 under this section in such amount as the department determines to be
41 appropriate and equitable.

42 a. As used in this section, a violation shall include the:

43 (1) obstructing, hindering, delaying or interfering by force or
44 otherwise with the commissioner in the exercise of any power or the
45 discharge of any function or duty pursuant to the provisions of
46 sections 6 through 13 of P.L. , c. (C.)(pending before the

1 Legislature as this bill);

2 (2) preparing, uttering or rendering of any false statements,
3 reports, documents, plans or specifications permitted or required
4 pursuant to sections 6 through 13 of P.L. , c. (C.)(pending
5 before the Legislature as this bill); or

6 (3) refusal or failure to comply with a ruling, action, order or
7 notice of the commissioner pursuant to sections 6 through 13 of
8 P.L. , c. (C.)(pending before the Legislature as this bill).

9 b. A person shall be deemed to have violated or caused to be
10 violated the provisions of sections 6 through 13 of P.L. , c.
11 (C.)(pending before the Legislature as this bill) if an officer, agent
12 or employee under his control has violated or caused to be violated
13 any provision of sections 6 through 13 of P.L. , c. (C.)(pending
14 before the Legislature as this bill).

15 c. If a person subject to sections 6 through 13 of P.L. , c.
16 (C.)(pending before the Legislature as this bill) is a corporation, all
17 officers, directors and shareholders having at least a 10% interest shall
18 be jointly and individually liable for any violation by the corporation.

19 d. The owner of a business firm shall be held liable for any failure
20 by an employee or subcontractor of the firm to adhere to the
21 provisions of sections 6 through 13 of P.L. , c. (C.)(pending
22 before the Legislature as this bill).

23

24 12. (New section) The department shall adopt regulations
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.) to implement the provisions of sections 6 through
27 13 of P.L. , c. (C.)(pending before the Legislature as this
28 bill), including regulations prescribing standards for the performance
29 of lead abatement work. Additionally, the commissioner may adopt
30 any applicable requirements or guidelines established by federal law or
31 regulation, including any requirements or guidelines that apply to
32 homeowners or other property owners, notwithstanding that the
33 requirements or guidelines may be inconsistent with the provisions of
34 sections 6 through 13 of P.L. , c. (C.)(pending before the
35 Legislature as this bill).

36

37 13. (New section) The department shall delegate, by rule or by
38 interagency agreement pursuant to R.S.52:14-4, to the Department of
39 Labor, its administrative and enforcement duties and functions
40 pursuant to the provisions of sections 6 through 13 of P.L. , c.

41 (C.)(pending before the Legislature as this bill) relating to the
42 certification of business firms to perform lead evaluation or abatement
43 work on public buildings, commercial buildings, bridges or any other
44 buildings or structures that do not contain dwelling units. When the
45 Department of Labor receives such a delegation, the Department of
46 Labor shall be reimbursed by the department in an amount that is

1 sufficient to cover the costs incurred by the Department of Labor in
2 administering and enforcing the provisions of sections 6 through 13 of
3 P.L. , c. (C.)(pending before the Legislature as this bill). The
4 costs incurred by the Department of Labor in administering and
5 enforcing this act shall be annually certified by the Director of the
6 Office of Management and Budget in the Department of the Treasury.
7 The Department of Health shall have ultimate responsibility for
8 ensuring that lead evaluation and abatement work on all buildings and
9 structures conforms to the requirements of sections 6 through 13 of
10 P.L. , c. (C.)(pending before the Legislature as this bill).

11

12 14. Sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427
13 through 52:27D-437) are repealed.

14

15 15. This act shall take effect immediately.

16

17 STATEMENT

18

19 This bill makes the Department of Health responsible for enforcing
20 standards for lead evaluation and abatement work in all buildings and
21 structures.

22 The bill repeals sections 14 through 24 of P.L.1993, c.288
23 (C.52:27D-427 through 52:27D-437) which provide the Department
24 of Community Affairs with responsibility for certifying business firms
25 doing lead evaluation and abatement work, and transfers the
26 provisions of these repealed sections to Title 26 of the Revised
27 Statutes, thereby consolidating the responsibility for enforcing lead
28 evaluation and abatement work standards in the Department of Health.
29 The latter is already required to certify lead evaluators and lead
30 abatement workers pursuant to sections 1 through 12 of P.L.1993,
31 c.288 (C.26:2Q-1 et seq.).

32 The need for an adequate supply of certified professionals for lead
33 evaluation and abatement work has been intensified by federal
34 government regulations which require the disclosure of lead-based
35 paint for all sales and leases of residential housing. It is anticipated
36 that this requirement will result in over 20,000 lead inspections
37 annually in New Jersey. When combined with the 3,000 annual
38 childhood lead poisoning cases handled by the Department of Health,
39 this increased demand for services will make it difficult for the State
40 to adequately address this problem, and thereby potentially jeopardize
41 the health of more children.

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45 _____
46 Makes Department of Health responsible for enforcing standards for
lead evaluation and abatement work in all buildings and structures.